SERVED: April 17, 2008

NTSB Order No. EA-5379

UNITED STATES OF AMERICA NATIONAL TRANSPORTATION SAFETY BOARD WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD at its office in Washington, D.C. on the 14th day of April, 2008

ROBERT A. STURGELL,
Acting Administrator,

Federal Aviation Administration,

Complainant,

v.

RYAN J. MOSHEA,

Respondent.

Docket SE-17479

ORDER DENYING RECONSIDERATION

Respondent seeks reconsideration of our decision in this proceeding, NTSB Order No. EA-5328, served October 19, 2007. In that decision, we affirmed the law judge's initial decision and the Administrator's suspension of respondent's air transport pilot certificate. We found that respondent violated 14 C.F.R. §§ 91.7(a), 135.65(b), and 91.13(a) by operating a civil aircraft in an unairworthy condition, by failing to enter or have entered in the aircraft maintenance log a mechanical irregularity that came to respondent's attention during flight, and by operating an aircraft in a careless or reckless manner.

We previously addressed and rejected respondent's argument that he was entitled to immunity from enforcement action based on his employer's voluntary self-disclosure of violations under FAA Advisory Circular (AC) 00-58, Voluntary Disclosure Reporting

Program.¹ One aspect of his argument, however, deserves further comment. Respondent argues that, unlike the circumstances in Administrator v. Liotta,² in the instant case the Administrator "accepted [voluntary disclosure] and committed herself to no `... legal enforcement action.'" Respondent's argument is hollow. While the Administrator may have "accepted" the disclosure for respondent's employer, against whom no enforcement action was pursued, respondent was not included. As noted in Liotta, any immunity that might inure to the employer does not extend to employees absent fulfillment of the conditions enumerated in the advisory circular.

We have considered respondent's other arguments, and find that they are generally duplicative of those in his appeal, or contain nothing that would cause us to reverse or modify our previous decision. To the extent that respondent seeks to raise new issues for the first time in his petition for reconsideration without, among other things, showing that they could not have been discovered and raised by the exercise of due diligence before the date the case was submitted to the Board, they are rejected. See 49 C.F.R. § 821.50(c).

ACCORDINGLY, IT IS ORDERED THAT:

Respondent's petition for reconsideration is denied.

ROSENKER, Chairman, SUMWALT, Vice Chairman, and HERSMAN, HIGGINS, and CHEALANDER, Members of the Board, concurred in the above order.

¹ <u>See</u> 49 C.F.R. § 821.50, which provides, in part, at subsection (d), "Repetitious petitions will not be entertained by the Board, and will be summarily dismissed."

² NTSB Order No. EA-5297 (2007).

One of respondent's arguments challenges the Board's conclusion that a § 91.13(a) charge is proved when an operational violation has been charged and proved. It is well settled that a charge under § 91.13(a) is proved when an operational violation has been charged and proved. See Administrator v. Seyb, NTSB Order No. EA-5024 at 4 (2003). This is referred to as a "residual" or "derivative" careless or reckless violation. The cases that have established this policy are numerous. See, e.g., Administrator v. Pritchett, 7 NTSB 784, n.17 (1991); Administrator v. Dutton, 7 NTSB 521, 523 (1990).

⁴ Respondent also notes that the opinion and order in his case contains the conjunction "and" rather than the correct "or" in the phrase "careless or reckless." We correct this error with an errata served in conjunction with this order.